

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

DONALD JENKINS,

Plaintiff,

VS.

DR. BRYTONTRAN, et al.,

Defendants.

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Civil Action File No.
1 : 09-CV-153 (WLS)

RECOMMENDATION

This is a *pro se* prisoner 42 U.S.C. § 1983 action. The Plaintiff filed this action on October 14, 2009, raising allegations of deliberate indifference to a serious medical need during his incarceration at Autry State Prison. Defendants filed a motion to dismiss on May 3, 2010. (Doc. 30). Plaintiff was notified of the filing of the motion to dismiss by an order dated May 12, 2010. (Doc. 33).

Plaintiff did not file any response to the motion. The undersigned entered an order for the Plaintiff to show cause why this suit should not be dismissed on November 4, 2010. (Doc. 34). Plaintiff did not file any response to the order to show cause.

The court's initial order providing service of the complaint dated February 23, 2010 contains the following directive to the parties:

Plaintiff is advised that he must diligently prosecute his complaint or face the possibility that it will be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute.

(Doc. 16).

The undersigned finds a clear record of the Plaintiff's failure to comply with the court order to

diligently prosecute this action, as is evidenced by his failure to respond to the motion to dismiss or the order to show cause. The undersigned finds a willful failure on the part of the Plaintiff to comply with the order of the court, and that giving Plaintiff more time to respond to either the motion to dismiss or the order to show cause would be futile.

Upon consideration of the alternatives that are available to the Court, it is the RECOMMENDATION of the undersigned that this action be **DISMISSED** without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure as no lesser sanction will suffice. *Link v. Wabash R.R.*, 370 U.S. 626, 630, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) (interpreting Rule 41(b) not to restrict the court's inherent authority to dismiss *sua sponte* an action for lack of prosecution); *World Thrust Films, Inc. v. International Family Entertainment, Inc.*, 41 F.3d 1454, 1456-57 (11th Cir.1995); *Mingo v. Sugar Cane Growers Co-op*, 864 F.2d 101, 102 (11th Cir.1989); *Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir.1985); *Jones v. Graham*, 709 F.2d 1457, 1458 (11th Cir.1983).

Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN FOURTEEN (14) DAYS of being served with a copy.

SO RECOMMENDED, this 14th day of December, 2010.

msd

//S Thomas Q. Langstaff
THOMAS Q. LANGSTAFF
UNITED STATES MAGISTRATE JUDGE